

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT SCHWERIN, II, No. CIV-S-02-0096 MCE/GGH P

Petitioner,

v.

ORDER

MICHAEL KNOWLES, ET AL.,

Respondent.

Petitioner, a state prisoner proceeding pro se, has timely filed a Notice of Appeal of this Court's November 3, 2005, denial of his Application for a Writ of Habeas Corpus. Before Petitioner can appeal this decision, a Certificate of Appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A Certificate of Appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

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1 The Certificate of Appealability must "indicate which specific
2 issue or issues satisfy" the requirement. 28 U.S.C.
3 § 2253(c)(3).

4 A Certificate of Appealability should be granted for any
5 issue that Petitioner can demonstrate is "'debatable among
6 jurists of reason,'" could be resolved differently by a different
7 court, or is "'adequate to deserve encouragement to proceed
8 further.'" Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir.
9 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

10 Petitioner has made a substantial showing of the denial of a
11 constitutional right in the following issues presented in the
12 instant petition: 1) the trial court violated Petitioner's right
13 to due process by permitting the prosecution to amend the
14 information and add offenses not supported by the evidence
15 presented at the preliminary hearing; 2) the prosecution
16 overcharged Petitioner; 3) improper admission of character
17 evidence under Cal. Evid. Code §§ 1101(b) and 1108, and jury
18 instruction error; 4) ineffective assistance of counsel; and 5)
19 prosecutorial misconduct.

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24 ¹ Except for the requirement that appealable issues be
25 specifically identified, the standard for issuance of a
26 Certificate of Appealability is the same as the standard that
applied to issuance of a Certificate of Probable Cause.
Jennings, at 1010.

1 Accordingly, IT IS HEREBY ORDERED that a Certificate of
2 Appealability is issued in the present action.

3 DATED: December 14, 2005

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7 MORRISON C. ENGLAND, JR
8 UNITED STATES DISTRICT JUDGE

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